

RESOLUTION NO. 2017- 03

**A RESOLUTION OF THE
COUNTY COUNCIL OF WARRICK COUNTY, INDIANA, APPROVING
AND AUTHORIZING CERTAIN ACTIONS AND PROCEEDINGS WITH
RESPECT TO CERTAIN PROPOSED ECONOMIC DEVELOPMENT
REVENUE BONDS AND RELATED MATTERS**

WHEREAS, Indiana Code Title 36, Article 7, Chapters 11.9 and 12 (collectively, the “Act”) declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

WHEREAS, pursuant to the Act, Warrick County, Indiana (the “County”), is authorized to issue economic development revenue bonds for the purpose of financing, reimbursing or refinancing the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster diversification of economic development, creation or retention of opportunities for gainful employment and affordable housing in or near the County; and

WHEREAS, Newburgh AL Developer, LLC, and Newburgh Assisted Living, LLC, one or more subsidiaries or affiliates thereof, and/or one or more entities in which any of the foregoing entities is a member, whether such entity is currently in existence or is to be created following the date hereof (collectively, the “Company”), in cooperation with the County, desires to finance a project within the County, including all or any portion of the acquisition, construction, renovation, installation and equipping of a 120-unit affordable assisted living multi-family housing facility, together with functionally related and subordinate facilities, for low and moderate income seniors, located in the County at Grimm Road and Rabbit Run Drive (the “Project”); and

WHEREAS, the Company has advised the Warrick County Economic Development Commission (the “Commission”) and the County concerning the Project, and has requested that the County issue, pursuant to the Act, one or more series of its taxable or tax-exempt County of Warrick, Indiana, economic development revenue bonds (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the bonds are issued) (the “Bonds”) in the approximate aggregate principal amount of Twenty Million Dollars (\$20,000,000), for the purpose of providing funds for paying all or part of the costs of the Project by making a portion of the proceeds of such Bonds available to the Company and paying all incidental expenses in connection with and on account of the issuance of the Bonds; and

WHEREAS, the issuance and sale of said Bonds will not reduce the legal bonding capacity of the County, and the County shall bear no expense in connection with the issuance and sale of said Bonds with all expenses in connection therewith which are incurred by the County to be reimbursed to the County by the Company; and

WHEREAS, the principal of and interest payable on said Bonds shall not be payable from any revenues of the County and shall not obligate the full faith and credit of the County but shall be payable solely from funds of the Company; and

WHEREAS, the Company has further advised the County that the determination by the County to agree preliminarily, on a non-binding basis, to accept such a request for financing the Project will constitute an inducement to the Company to proceed with the negotiations for the financing of the Project, it being the intent of the Commission and the County to defer any final approval of the Project and the financing thereof until a subsequent meeting held in accordance with Section 25 of the Act following a public hearing held in accordance with Section 24 of the Act; and

WHEREAS, the Commission has studied the Project and the proposed financing of the Project and its effects on the health and general welfare of the County and its citizens; and

WHEREAS, the completion of the Project will result in the diversification of industry, the creation and retention of jobs, the creation and retention of business opportunities in the County, the creation and retention of affordable housing in the County, and will be of public benefit to the health, safety and general welfare of the County and its citizens; and

WHEREAS, pursuant to and in accordance with the Act, the County desires to provide funds necessary to finance all or a portion of the Project by issuing the Bonds; and

WHEREAS, the diversification of industry and creation of job opportunities (approximately 37 full-time equivalent jobs) to be achieved by the acquisition, design, construction and equipping of the Project will be of public benefit to the health, safety and general welfare of the County and its citizens; and

WHEREAS, it is tentatively found that the acquisition, design, construction and equipping of the Project will not have an adverse competitive effect on any similar facility already constructed or operating near or in the County; and

WHEREAS, the Commission approved a report (the "EDC Report") and adopted an inducement resolution (the "EDC Inducement Resolution"), which the EDC Report and EDC Inducement Resolution have been forwarded by the Commission to this County Council making tentative findings that the financing of the Project complies with the purposes and provisions of the Act and that such financing will be of benefit to the health and welfare of the County, and that the Project will not have an adverse competitive effect or impact on any similar facility already constructed or operating in the same market area or in or about the County; and

WHEREAS, based upon the EDC Report and the EDC Inducement Resolution, this County Council hereby finds and determines that the funding preliminarily approved by the Economic Development Commission for all or a portion of the Project will be of benefit to the health and general welfare of the citizens of the County, complies with the provisions of the Act and the amount necessary to finance all or a portion of the costs of the Project, together with

incidental expenses incurred in connection therewith, will require the issuance, sale and delivery of one or more series of economic development revenue bonds in an approximate aggregate combined principal amount of Twenty Million Dollars (\$20,000,000); and

WHEREAS, in order to provide the Company with the ability to reimburse itself for costs of the Project from the proceeds of economic development revenue bonds, if and when issued by the County, the County Council, for and on behalf of the Company, desires to declare its intent to reimburse the costs of the Project pursuant to Treas. Reg. §1.150-2 and Indiana Code §5-1-14-6(c);

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF THE COUNTY OF WARRICK, INDIANA, AS FOLLOWS:

Section 1. After considering the evidence presented and findings of fact set forth in the EDC Report, this County Council hereby tentatively finds, determines, ratifies and confirms that the financing of the economic development facilities consisting of the Project, the issuance and sale of the Bonds, and the use of the net proceeds thereof by the County and/or the Company to finance all or a portion of the Project will: (i) result in the diversification of industry, the creation or retention of business opportunities, the creation or retention of opportunities for gainful employment and the creation of affordable housing within the jurisdiction of the County; (ii) serve a public purpose, and will be of benefit to the health and general welfare of the County; (iii) comply with the purposes and provisions of the Act and it is in the public interest that the County take such lawful action as determined to be necessary or desirable to encourage the diversification of industry, the creation or retention of business opportunities, the creation or retention of opportunities for gainful employment and the creation of affordable housing within the jurisdiction of the County; and (iv) not have a material adverse competitive effect on any similar facilities already constructed or operating in or near the County. The findings of fact set forth in the EDC Report and this paragraph are based upon evidence and testimony presented to the Commission at its meeting on September 7, 2017 that the proceeds of the Bonds will be used for the acquisition, design, construction and equipping of the Project, capitalized interest on the Bonds during construction and costs of issuance for the Bonds.

Section 2. This County Council hereby tentatively finds and determines that the issuance and sale of economic development revenue bonds in an approximate principal of Twenty Million Dollars (\$20,000,000) of the County under the Act for the lending of the proceeds of the revenue bonds to the Company for the purpose of financing a portion of the cost of the acquisition, construction, renovation, installation and equipping of the Project will serve the public purposes referred to above, in accordance with the Act.

Section 3. In order to induce the Company to proceed with the acquisition, construction, renovation, installation and equipping of the Project, this County Council hereby tentatively finds and determines that (i) it will take or cause to be taken such actions pursuant to the Act as may be required to implement the aforesaid financing, or as it may deem appropriate in pursuance thereof; provided that all of the foregoing shall be mutually acceptable to the County and the Company; (ii) it will adopt such resolutions and authorize the execution and delivery of

such instruments and the taking of such action as may be necessary and advisable for the authorization, issuance and sale of said economic development revenue bonds; and (iii) it will use its best efforts to assist the Company in procuring the issuance of additional economic development revenue bonds, if such additional bonds become necessary for refunding or refinancing the outstanding principal amount of the economic development revenue bonds, for completion of the Project and for additions to the Project, including the costs of issuing additional bonds (provided that the financing of such addition or additions to the Project is found to have a public purpose (as defined in the Act) at the time of the authorization of such additional bonds), and that the aforementioned purposes comply with the provisions of the Act.

Section 4. All costs of the Project incurred after the date permitted by applicable federal tax and state laws, including reimbursement or repayment to the Company of moneys expended by the Company for application fees, planning, engineering, a portion of the interest paid during acquisition, construction and equipping of the Project, underwriting expenses, attorney and bond counsel fees, and acquisition, design, construction and equipping of the Project will be permitted to be included as part of the bond issue to finance the Project, and the County will lend the proceeds from the sale of the bonds to the Company for the same purposes. Also, certain indirect expenses, including but not limited to, planning, architectural work and engineering incurred prior to this inducement resolution will be permitted to be included as part of the bond issue to finance the Project. This resolution shall constitute "official action" for purposes of compliance pursuant to Treas. Reg. §1.150-2 and IC 5-1-14-6(c) requiring governmental action as authorization for future reimbursement from the proceeds of bonds.

Section 5. The County does not, by this or any other approval or funding, guarantee, warrant or even suggest that the Bonds will be a reasonable investment for any person, firm or corporation.

Section 6. The County shall not be obligated, directly or indirectly, to see to the application or use of the proceeds from the sale of the Bonds or to see that the contemplated improvements, if any, are constructed. The County is in no way responsible to the holders of any Bonds for any payment obligation created by the Bonds.

Section 7. The Bonds shall be limited, special obligations of the County payable solely from the funds provided therefor as described in the indenture authorizing the Bonds, and shall not constitute an indebtedness of the Commission or the County or a loan of the credit thereof within the meaning of any constitutional or statutory provisions.

Section 8. This resolution does not constitute a binding obligation or duty of the Commission, the County, and/or the County Council on which the Company may rely for any purpose and is subject to the adoption of a bond ordinance by this County Council in accordance with the provisions of the Act.

Section 9. This resolution shall be in full force and effect upon adoption and compliance with IC 36-2-4.

Passed and adopted by the County Council of Warrick County, Indiana, this 7th day of September, 2017.

Member, Warrick County Council

Greg Richmond

Member, Warrick County Council

Charles R. Johnston

Member, Warrick County Council

Brad Overton

Member, Warrick County Council

David Hackmeister

Member, Warrick County Council

Paul C. Rudolph

Member, Warrick County Council

Member, Warrick County Council

The foregoing was passed by the Warrick County Council this 7th day of September, 2017, and presented by me to the Presiding Officer of the Warrick County Council this 7 day of Sept., 2017.

Charles H. Stevens

Auditor, Warrick County, Indiana

Approved and signed this 7 day of September 2017.

George Myers

President, Warrick County Council